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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,924	05/19/2006	Diana Oehms	102792-587-11376P4US	9098
27389	7590	03/21/2012	EXAMINER	
PARFOMAK, ANDREW N.			HARMON, CHRISTOPHER R	
NORRIS MC LAUGHLIN & MARCUS PA			ART UNIT	PAPER NUMBER
875 THIRD AVE, 8TH FLOOR			3721	
NEW YORK, NY 10022				

MAIL DATE	DELIVERY MODE
03/21/2012	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DIANA OEHMS, PAVLINKA ROY,
JORDI SALVADOR, and RALF WIEDEMANN

Appeal 2010-003769
Application 10/595,924
Technology Center 3700

Before STEVEN D.A. MCCARTHY, PHILLIP J. KAUFFMAN, and
JAMES P. CALVE, *Administrative Patent Judges*.

CALVE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the decision of the Examiner rejecting claims 3-24 under 35 U.S.C. § 102(b) as anticipated by Fregonese (WO 02/092454 A1; pub. Nov. 21, 2002). Claims 1 and 2 have been cancelled. We have jurisdiction under 35 U.S.C. § 6.

We REVERSE.

THE INVENTION

Claims 3 and 24 illustrate the claimed subject matter on appeal:

3. A process for the manufacture of a single or multi-compartment, rigid, water-soluble container, containing a detergent composition, wherein the container is at least partially formed of injection moulded water soluble polymer; the process comprising the steps of forming the container, keeping the container under substantially anhydrous conditions, filling the container with the detergent composition and sealing the container, wherein the container is allowed to come into contact with, or is brought into contact with a plasticiser after sealing.

24. A process for the manufacture of a single or multi-compartment rigid, water-soluble container, containing a detergent composition, comprising:

- (i) forming an array of containers in an injection moulding process;
- (ii) removing the array from the mould;
- (iii) placing the array in a storage area, substantially free of moisture;
- (iv) filling the array of containers with the detergent composition;
- (v) placing a closure on the array;
- (vi) sealing the containers; and
- (vii) separating the array into individual containers.

ANALYSIS

The Examiner found that Fregonese discloses a method of making rigid, water-soluble containers that includes “keeping the container under substantially anhydrous conditions” (claim 3) and “placing the array in a storage area” (claim 24). Ans. 3, 5. The Examiner interpreted the term “anhydrous conditions” to mean “conditions in which object is not wetted with water” and the limitation “keeping the container under substantially anhydrous conditions” to mean “keeping the container in conditions of substantially not being wetted with water.” Ans. 6. The Examiner found

that Fregonese does not disclose a step of watering the container or wetting the container with water and therefore anticipates the step of “keeping the container under substantially anhydrous conditions.” Ans. 6. The Examiner also interpreted “substantially anhydrous conditions” to mean that some water, such as moisture in the ambient atmosphere, does exist in such conditions so Fregonese anticipates the claimed invention. *Id.*

We agree with Appellants that Fregonese does not disclose “keeping the container under substantially anhydrous conditions” as called for in claim 1. App. Br. 4-5. The Examiner’s interpretation of this limitation is inconsistent with its ordinary meaning and Appellants’ Specification, which discloses that “anhydrous retention conditions” may be effected by use of common environmental controlled means to store filled containers at low humidity levels using dehumidifiers to control the atmosphere of the storage area or storing the filled containers in a sealed enclosure from which the bulk of the available moisture is withdrawn. Spec. 6, l. 31 to 7, l. 8; App. Br. 4-5. This disclosure comports with the ordinary usage of “anhydrous” which means “free from water and esp. water of crystallization” (*see* MERRIAM WEBSTER’S COLLEGIATE® DICTIONARY 49 (11th ed. 2005)) and “[b]eing without water, especially water of hydration” (*see* McGRAW-HILL DICTIONARY OF SCIENTIFIC AND TECHNICAL TERMS 97 (5th ed. 1994)).

The Examiner’s finding that Fregonese does not disclose any step of watering the container or wetting the container with water does not address whether Fregonese discloses “keeping a container under substantially anhydrous conditions” (claim 1) or a storage area “substantially free of moisture” (claim 3). *See* App. Br. 5-6. The Examiner’s statement that Fregonese’s water-soluble container is kept in a dried condition prior to

filling and sealing is not supported by any evidence of record. Fregonese discloses a method of making a water-soluble array by injection molding, filling, and sealing the receptacle parts of the array (p. 16, l. 30 to p. 17, l. 4), but does not disclose a step of keeping filled containers under substantially¹ anhydrous conditions (claim 3) or placing the array in a storage area that is substantially free of moisture (claim 24). *See* App. Br. 6. As such, we cannot sustain the rejection of claims 3 and 24 or dependent claims 4-23.

DECISION

The rejection of claims 3-24 is REVERSED.

REVERSED

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¹ The term “substantially” or “substantial” denotes approximation in this context as Appellants disclose that containers are stored in conditions where the humidity level is low or the bulk of available moisture is withdrawn. Spec. 6, l. 31 to 7, l. 8; *see Cordis Corp. v. Medtronic AVE, Inc.*, 339 F.3d 1352, 1360 (Fed. Cir. 2003) (stent wall surface of “substantially uniform thickness” must be of largely or approximately uniform thickness); *Playtex Prods., Inc. v. Procter & Gamble Co.*, 400 F.3d 901, 907 (Fed. Cir. 2005) (“The term ‘substantial’ is a meaningful modifier implying ‘approximate,’ rather than ‘perfect.’”); *York Prods., Inc. v. Central Tractor Farm & Family Ctr.*, 99 F.3d 1568, 1573 (Fed. Cir. 1996) (construing “substantially” as “largely but not wholly that which is specified”).